76-96 except 94 & 95

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : April 4th, 2007

1.+ CRL.REV.P. 208/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRAFULL CHANDRA ..... Respondent
Through

2.+ CRL.REV.P. 209/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRAMOD KUMAR ..... Respondent
Through

3.+ CRL.REV.P. 210/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRATEEK PANDIT ..... Respondent
Through

4.+ CRL.REV.P. 211/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRASHANT DANG ..... Respondent
Through

5.+ CRL.REV.P. 212/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

RAJEEV GAUR ..... Respondent
Through

6.+ CRL.REV.P. 213/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

RAJEEV BHATEJA ..... Respondent
Through

7.+ CRL.REV.P. 214/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRASHANT SWAIN ..... Respondent
Through

8.+ CRL.REV.P. 215/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRAKASH NAIR ..... Respondent
Through

9.+ CRL.REV.P. 216/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRASHANT MEHRA ..... Respondent
Through

10.+ CRL.REV.P. 217/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

RAJA SINGH ..... Respondent
Through

11.+ CRL.REV.P. 218/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

RAJANDER LAL ..... Respondent
Through

12.+ CRL.REV.P. 219/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates
versus

PRAVEEN ANAND ..... Respondent
Through

13.+ CRL.REV.P. 220/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

RAJEEV THAMPI ..... Respondent
Through

14.+ CRL.REV.P. 221/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRATAP SINGH THAKUR ..... Respondent
Through

15.+ CRL.REV.P. 222/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRAHLAD DUTT BASETIA ..... Respondent
Through

16.+ CRL.REV.P. 223/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRAMOD KR.GAUTAM ..... Respondent
Through

17.+ CRL.REV.P. 224/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRAVEEN MALHOTRA ..... Respondent
Through

18.+ CRL.REV.P. 225/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

RAJAN GEORGE ..... Respondent
Through

19.+ CRL.REV.P. 228/2007

ICICI BANK LTD. ..... Petitioner
Through Mr. S.C.Bhalla, Mr. Puneet Bhalla, Advocates

versus

PRAMILA TOMER ..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not? yes

3. Whether the judgment should be reported in the Digest?

%

MR. JUSTICE S. RAVINDRA BHAT (Open Court)

1. In all these cases identical orders made by the learned Metropolitan Magistrate on 30.3.2007 dismissing the complaints preferred, have been impugned. The petitions involve identical questions of fact and law. Since the complaints were dismissed

without further proceeding, on the first date of hearing, by the trial court, these revision petitions are being disposed off finally at the admission stage.

2. The impugned order reads as follows :

> *"Heard : The perusal of the averments made in the complaint of the complainant is beyond statutory period and the same has already been observed by Ld. ACCM. More over no application for condonation of delay has been filed. Therefore, the case is hereby dismissed.*
>
> *File be consigned to record room."*

3. The complaints in all the proceedings filed by the common petitioner-Bank were identically phrased; they alleged commission of offences under Section 138/141 of Negotiable Instruments Act. It was alleged that the cheques in question were dishonoured upon presentation; as a consequence legal notices under Section 138(b) of the Act were issued on 15.12.2006. Since the notices went unheeded and according to the complainant the accused did not comply with their terms and pay the amounts, the complaints were filed.

4. Learned counsel contended that the Magistrate fell into error in concluding that the complaints were filed beyond the statutory period. It was submitted that the Magistrate was unduly influenced by the observations of the Additional Chief Metropolitan Magistrate, who appears to have made a noting to such an effect while marking the cases to the trial court.

5. Counsel submitted that the notices in that sense were issued on 15.12.2006 and in terms of Section 27 of the General Clauses Act, 1897 (hereafter "the 1897 Act") service would be deemed to be completed in the ordinary course at least one week

after their issuance. Counsel contended that neither the undelivered letters nor A.D. cards were received by the complainants.

6. Learned counsel for the petitioner relied upon the decision of the Supreme Court in *M/s. Dalmia Cement (Bharat) Ltd. Vs. M/s Galazy Traders & Agencies Ltd. & Ors., 2001 DCR 198.* It was contended that the court had taken note of Section 27 of the 1897 Act and observed that the sender of notice enjoys benefit of a presumption. Counsel contended that in these circumstances the filing of the complaints on the 48th day after the issuance of the legal notice could not be construed as beyond the time prescribed as it would lead to an obvious anomaly, i.e. time being reckoned from the date of the notice.

7. Section 138, to the extent it is material is extracted below :

> "*138. Dishonour of cheque for insufficiency, etc., of funds in the account – Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:*
> *Provided that nothing contained in this section shall apply unless-*
> *(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid."

8. The pre-conditions for filing a valid complaint which can be entertained are as follows :

   1) Receipt by the payee about dishonour of the instrument from the drawer's banker;

   2) Issuance of legal notice within 30 days of receipt of such information;

   3) Filing of a complaint within 15 days of receipt of the notice, by the drawer.

9. The object behind enacting these pre-conditions was to ensure that drawers of the instrument are afforded opportunity to make good the payment, after being called upon to do so. At the same time however Parliamentary intention was clear; once notice is issued in a given case, the payee has to necessarily, in order to avail of the summary procedure, approach the court within the stipulated period.

10. The notices here were despatched on 15.12.2006. The trial court appears to have proceeded on a footing that the 45 days period i.e. the 30 days for the legal notice and further period of 15 days for the filing of the complaint, commenced from the date of the issuance of the legal notice. This in my opinion was not only fallacy, but a palpable error. In this context it will be useful to extract the observations of the Supreme Court in *K.Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, (1999) 7 SCC 510*.

"If a strict interpretation is given that the drawer

should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt as interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure."

11.Section 27 which was noticed by the Supreme Court reads as follows :

> *"27. Meaning of service by post :Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression `serve' or either of the expression `give' or `send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.*"

12. In these cases the trial court has given no allowance for service of the notice and the time which would ordinarily have been taken, for the purpose. The key expression in Section 27, which was held applicable by the Supreme Court (in cases arising out of complaints alleging commission of offences under Section 138 of the Act) are that the notice would be deemed to have been effected at the time when the letter would be delivered in the "ordinary course of post". This aspect has escaped the attention of the court which reckoned time from the date when the legal notice was issued giving no

allowance for the presumption to operate. I am of the opinion that the benefit of at least a week is admissible in this regard. So reckoned; the limitation in this case would have expired on 5.2.2007 and the bar under Section 142 would have operated thereafter. However, the complaints were filed within that time, on 2.2.2007, and therefore could not have been rejected on that ground.

13. For the above reasons, the impugned orders cannot be sustained. They are hereby set aside. The matter is remitted to the trial court for further proceedings in accordance with law. The petitioner shall appear before the trial court for further proceedings/directions on 24.4.2007. Order dasti.

(S.RAVINDRA BHAT)
JUDGE

APRIL 04, 2007
mm